

Filed: February 19, 2013

Respondent.

Joint Stipulation on Damages; Measles, Mumps, Rubella (“MMR”) Vaccine; Varicella Vaccine; Seizure disorder.

Traci R. Patton, Washington, DC, for respondent.

On December 15, 2000, petitioner, Faith Ginene Wenrich, filed a petition on behalf of her minor child, Michael Allen Wenrich, seeking compensation under the

¹ The undersigned intends to post this decision on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). In the absence of such motion, “the entire” decision will be available to the public. *Id.*

National Vaccine Injury Compensation Program (“the Vaccine Program”) for a vaccine-related injury.²

On February 15, 2013, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Faith Ginene Wenrich, alleged that Michael suffered a seizure disorder as a consequence of his measles, mumps and rubella (“MMR”) and Varicella vaccinations, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R § 100.3(a). Ms. Wenrich further alleges that Michael experienced the residual effects of this injury for more than six months and she seeks damages related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that Michael’s alleged injury and residual effects were caused-in-fact by either the MMR or Varicella vaccines. Nonetheless, the parties have agreed informally to resolve this matter.

The court hereby ADOPTS the parties’ said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded:

1. A lump sum payment of \$10,000.00, representing compensation for damages that would be available under 42 U.S.C. §300aa-15(a), payable to Faith Ginene Wenrich, petitioner; and
2. An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph 10 of the attached Stipulation, paid to the life insurance company from which the annuity will be purchased.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

MICHAEL ALLEN WENRICH, a minor)	
incompetent, by his mother and natural)	
guardian, FAITH GINENE WENRICH,)	
)	
Petitioner,)	No. 00-758V
v.)	Chief Special Master Campbell-Smith
)	ECF
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Michael Allen Wenrich ("Michael"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Michael's receipt of Measles-Mumps-Rubella ("MMR") and Varicella vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Michael received MMR and Varicella immunizations on December 28, 1998.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Michael sustained the first symptom or manifestation of a neurological injury on or about January 6, 1999. She further alleges that he developed a seizure disorder and behavioral problems as sequelae of this injury, and that Michael experienced residual effects of this injury for more than six months.

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5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Michael as a result of his condition.

6. Respondent denies that the vaccines caused any injury and denies that Michael experienced the residual effects of any alleged vaccine injury for more than six months.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$10,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in paragraph 8.b., in the form of a check payable to petitioner; and
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. The Life Insurance Company must have a minimum of \$250,000,000.00 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+u, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Michael Wenrich, pursuant to which the Life Insurance Company will agree to make payments periodically to Michael Wenrich for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. On December 25, 2017, a certain lump sum payment in the amount of \$10,137.83.
- b. On December 25, 2019, a certain lump sum in the amount of \$11,302.66.
- c. On December 25, 2022, a certain lump sum in the amount of \$12,884.92.

The payments provided for in this paragraph 10 shall be made as set forth above. Should Michael Wenrich predecease the exhaustion of any certain payments set forth above, any remaining certain payments shall be made to his estate. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Michael Wenrich's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to

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42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Michael as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

16. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Michael's estate under the laws of the State of Pennsylvania.

17. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity and as legal representative of Michael, on behalf of herself, Michael, and his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and

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Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Michael resulting from, or alleged to have resulted from, any of the vaccinations administered on December 28, 1998, as alleged by petitioner in a petition for vaccine compensation filed on or about December 15, 2000, in the United States Court of Federal Claims as petition No. 00-758V.

18. If Michael should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

19. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

20. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

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21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the MMR or Varicella vaccine caused Michael to suffer neurological injury, a seizure disorder, or any other injury or condition.

22. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Michael Wenrich.

END OF STIPULATION

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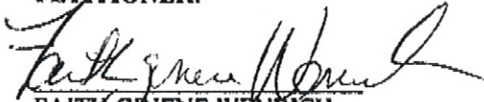
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Respectfully submitted,

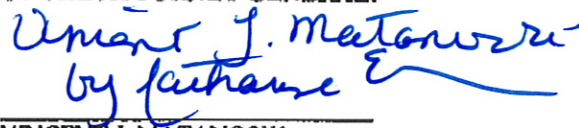
PETITIONER:


FAITH GINENE WENRICH

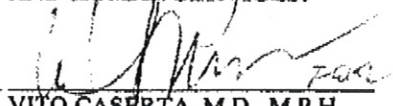
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Dated: 2-1-2013